

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA HARRIS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 03-1249; Submitted on the Record;
Issued August 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained an injury on March 25, 2002 in the performance of duty.

On March 28, 2002 appellant, then a 49-year-old clerk, filed an occupational disease claim alleging that she sustained a dislocated right shoulder due to factors of her federal employment. She noted that she had a previous employment-related injury in 1985.

In a report dated March 27, 2002, Dr. L. Benton diagnosed a right shoulder dislocation and opined that appellant could return to limited-duty employment. In a clinic note from the employing establishment dated March 28, 2002, a nurse noted that appellant wanted to go home and take medication. Appellant indicated on the form that her injury on March 25, 2001 was job related and that she first injured herself in 1985.

By letter dated April 10, 2002, an official with the employing establishment controverted appellant's claim. The official noted that she worked limited duty beginning in 1985 and that her duties included repairing damaged mail by picking up one letter at a time.

By decision dated June 28, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence was insufficient to establish fact of injury. The Office noted that she had not described the employment factors to which she attributed her shoulder dislocation or submitted medical evidence sufficient to establish causation.

In a letter dated November 25, 2002, appellant requested reconsideration of her claim. She indicated that she experienced numerous right shoulder dislocations since 1985. Appellant related, "[s]imple household chores and daily hygiene activities can precipitate a dislocation as well as the simple activities assigned to me at work. The March 26, 2002 incident was only one of several that has occurred, but required anesthesia induction for shoulder reduction."

In a statement received by the Office on December 2, 2002, appellant described her injury as occurring on March 25, 2002 as follows:

“I was sitting down sliding full 775 tubs across my table from one end to the other (pulling from the right side to the left with my right hand so the mail would be closer to me) all night.... Due to my permanent disability I am not able to lift over 10 pounds. While sliding the full 775 tubs across my table I felt my right shoulder pop after the 5th full 775 tub and 1-mm tray, I was sliding (1) 775 tub about every hour across my table. When I felt the pop I stopped working for a min[ute] and relaxed then went back to work flip-flopping mail.”

Appellant related that she finished working, went home and then woke up the next day unable to move.

Appellant submitted a report dated March 26, 2002 from Dr. Stephen F. Larson, who is Board-certified in emergency medicine. He diagnosed an acute right shoulder dislocation. Dr. Larson noted that appellant described a history of problems with her right shoulder since a 1985 employment injury. He stated:

“[Appellant] knows of no focal injury event at this time but she thinks it may be dislocated again. She says [that] she was doing her normal work handling trays yesterday as a mailhandler but when she awoke this morning she noted that she was having right shoulder pain and inability to range the shoulder.”

Dr. Larson further noted that appellant had a history of a seizure disorder but denied that she sustained a seizure during the night. He diagnosed an acute right shoulder dislocation.

In a treatment note dated May 6, 2002, a physician diagnosed a dislocated shoulder requiring surgery and found that appellant should remain off work until July 8, 2002. In a medical report of the same date, Dr. Terence J. McDonnell, a Board-certified orthopedic surgeon, noted that appellant worked at the employing establishment and had a history of right shoulder dislocations beginning in 1985. He stated that, “[o]n March 25, 2002 [appellant] was ‘reaching up’ with the [right] hand to get something on an overhead shelf. She dislocated the [right] shoulder.” Dr. McDonnell noted that x-rays “demonstrated the dislocation as well as a large Hill-Sachs lesion on the posterior aspect of the humeral head.” He recommended referral to a shoulder surgeon.

In a report dated July 8, 2002, Dr. Bruce E. Thompson, who is Board-certified in emergency and preventive medicine, diagnosed a right shoulder dislocation, arthritis and lumbar strain. He recommended that appellant remain off work pending further evaluation.

In an undated medical report, received by the Office on July 9, 2002, Dr. Robert Wagner noted that appellant received treatment in the emergency room for a dislocated shoulder and provided a history of a prior dislocation in 1985. He found that she could continue to work with restrictions and referred her to an orthopedic surgeon.

In a report dated August 23, 2002, a physician noted that appellant related a history of recurrence right shoulder dislocations since 1985. He stated:

“[Appellant] is employed by the [employing establishment] and originally hurt the shoulder on the job in 1985 when it dislocated. Since then, she has had recurrent subluxations and has had multiple dislocations at work at the [employing establishment].

“In March of this year on the job, [appellant] pushed a large tub away from her and the shoulder dislocated entirely....”

The physician related that a magnetic resonance imaging (MRI) scan revealed “a large Hill-Sachs deformity, erosion and injury of the anterior genloid with a Bankart lesion. There is also secondary degenerative change.”

By decision dated January 6, 2003, the Office denied modification of its prior decision. The Office indicated that it had obtained appellant’s records from her 1985 work injury and found that it was accepted for a back strain rather than a right shoulder injury.

The Board finds that appellant has not established that she sustained an injury on March 25, 2002 in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act² and that an injury was sustained in the performance of duty.³ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In this case, appellant described her condition as occurring when she repeatedly slid tubs of mail across the table on March 25, 2002.⁵ However, in a statement dated April 15, 2002, John Parsons, appellant’s supervisor, related that appellant never handled 775 tubs. He stated that appellant “does repair damaged mail by taping it back together.” Mr. Parsons further noted that he was appellant’s supervisor on March 25, 2002 and had “observed [appellant].” Further, in a medical report dated May 6, 2002, Dr. McDonnell described appellant’s injury as occurring

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ Office regulations at 5 U.S.C. § 10.6(ee) define traumatic injury as a “condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such a condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.” In view of appellant’s statement that she sustained her injury on March 25, 2002 sliding tubs of mail across a table, her claim is for a traumatic injury rather than an occupational disease.

when she reached overhead to get an object from a shelf rather than when she pushed tubs of mail across a table. The record, therefore, contains inconsistencies in the description of the incident that cast doubt on whether appellant's injury occurred at the time, place and in the manner alleged.

Additionally, appellant has not submitted sufficient rationalized medical opinion evidence, based on a complete factual and medical background, to support a causal relationship between the alleged March 25, 2002 employment incident and her diagnosed condition of a dislocated shoulder.⁶ In support of her claim, appellant submitted numerous reports from physicians addressing her diagnosed condition and physical limitations but not the cause of her shoulder dislocation. In a report dated March 27, 2002, Dr. Benton diagnosed a right shoulder dislocation and found that appellant could work limited duty. In a treatment note dated May 6, 2002, a physician diagnosed a dislocated shoulder and opined that appellant should remain off work. Dr. Thompson, who is Board-certified in emergency and preventative medicine, found in a report dated July 8, 2002 that appellant should remain off work due to her shoulder dislocation. In an undated report, Dr. Wagner found that appellant could work with restrictions and referred her to an orthopedic surgeon. As none of these physicians address the cause of appellant's dislocated shoulder, their reports are insufficient to meet her burden of proof.⁷

Appellant submitted a March 26, 2002 report from Dr. Larson, who diagnosed an acute right shoulder dislocation. He discussed appellant's history of "doing her normal work handling trays yesterday" with no known injury. As Dr. Larson did not attribute appellant's shoulder dislocation to the March 25, 2002 employment incident, his opinion is of little probative value.

In a report dated May 6, 2002, Dr. McDonnell, a Board-certified orthopedic surgeon, discussed appellant's history of right shoulder dislocations beginning in 1985. He stated that appellant related injuring her shoulder on March 25, 2002 "reaching up" with her right hand "to get something on an overhead shelf." Dr. McDonnell diagnosed a dislocation and a Hill-Sachs lesion by x-ray. He, however, did not attribute appellant's shoulder dislocation to the incident identified by appellant on March 25, 2002 as causing her condition, that of pushing tubs of mail across a table. Therefore, his report is of diminished probative value.

In a report dated August 23, 2002, a physician,⁸ discussed appellant's history of an employment-related shoulder dislocation in 1985. He noted that subsequent to 1985 appellant "had multiple dislocations at work at the [employing establishment]." The physician further noted, "[i]n March of this year on the job, she pushed a large tub away from her and the shoulder dislocated entirely." He diagnosed a large Hill-Sachs deformity by MRI scan and "erosion and injury of the anterior gelnoid with a Bankart lesion." While the physician describes appellant's shoulder dislocation as occurring after pushing a tub of mail at work in March 2002, it is not clear whether the physician is offering his own opinion or whether he is merely relating the

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁸ The name of the physician is not provided.

history provided by appellant. Further, the history relied upon by the physician of appellant experiencing multiple employment-related shoulder dislocations beginning in 1985 is not supported by the record. In order to be of probative value, a medical opinion must be based on a complete and accurate factual and medical history.⁹

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.¹⁰ To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.¹¹ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

The decision of the Office of Workers' Compensation Programs dated January 6, 2003 is affirmed.

Dated, Washington, DC
August 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *Joseph M. Popp*, 48 ECAB 624 (1997).

¹⁰ *William S. Wright*, 45 ECAB 498 (1993).

¹¹ *Id.*